

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs June 19, 2007

STATE OF TENNESSEE v. MICHAEL COLLINS REED

**Direct Appeal from the Criminal Court for Davidson County
No. 2004-D-2936 Cheryl Blackburn, Judge**

No. M2006-02140-CCA-R3-CD - Filed July 13, 2007

The appellant, Michael Collins Reed, pled guilty in the Davidson County Criminal Court to attempted aggravated robbery and received an eight-year sentence to be served as ten years on probation. Subsequently, the trial court revoked his probation and ordered that he serve the sentence in confinement. On appeal, the appellant admits that he violated probation but claims the court erred by not reinstating his probation and by ordering him to serve his sentence in confinement. Upon review of the record and the parties' briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Nathan Moore, Nashville, Tennessee, for the appellant, Michael Collins Reed.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Rob McGuire, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

The record reflects that a Davidson County grand jury indicted the appellant for attempted first degree premeditated murder, especially aggravated robbery, and two counts of evading arrest. On March 17, 2005, the appellant pled guilty to one count of attempted aggravated robbery, a Class C felony, and pursuant to the plea agreement, the trial court sentenced him as a Range II, multiple offender to eight years to be served as ten years on probation. On October 7, 2005, a probation violation warrant was issued, alleging that the appellant had violated his probation by testing positive for marijuana on September 23, 2005. On October 26, 2005, the trial court concluded that the appellant had violated probation, ordered that he serve thirty days in confinement, and ordered that

his probation be reinstated upon completion of the thirty days in jail. On February 10, 2006, a second probation violation warrant was issued, alleging that the appellant had violated his probation by failing to provide his probation officer with proof of employment, changing his address without informing his probation officer, failing to report to his probation officer, failing to pay probation fees, failing to provide his probation officer with any proof of his public service work, not attending GED classes, and failing to pay anything toward his court costs and fines.

At the September 22, 2006 probation revocation hearing, the appellant acknowledged that he violated probation. He stated that he moved to Murfreesboro but left a message on his probation officer's "voice mail," informing her that he "was going through some situations with my child" and that he was moving to Murfreesboro to take care of his daughter's problem. The appellant's probation officer telephoned him, counseled him about the situation, and told him that he needed to report to her office. The appellant testified that his daughter had been molested by her mother's husband and that his daughter's abuse "just tore me up." He said that he tried to explain to his probation officer that he was "dealing with so much pain . . . and . . . trying to overcome staying out of trouble . . . and not running back in these streets." The appellant stated that he was "not trying to neglect the rules of this probation at all" and that he tried to start his own business. He said he did whatever he could to stay focused and "stay [away] from trying to pick up a gun or something to go rob somebody to pay bills." He stated that when his probation violation warrant was issued in February 2006, he was working full time for a bricklaying company. The appellant also had recently worked at a car wash. He acknowledged that while he had moved from job to job during his time on probation, he had always been employed. The appellant acknowledged that he missed paying some of his probation fees and court costs. He stated that if the trial court would reinstate his probation, he would do everything the court asked of him "to the fullest."

Upon questioning by the trial court, the appellant acknowledged that he had quit reporting to his probation officer. The court announced that on September 6, 2006, it had amended the appellant's February 2006 probation violation warrant to reflect that the appellant had been found guilty of another crime. The appellant explained that in August 2006, the police had stopped him on the street as he was walking to his daughter's birthday party. The police asked him for identification and asked his name. When the appellant told them his name was Michael Moore, they accused him of using an alias. The appellant was subsequently charged with criminal impersonation.

The trial court stated that this was "a very serious case," noting that the victim had been shot in the stomach by a person the victim identified as the appellant. The trial court noted that the appellant had violated his probation previously, was released back onto probation after serving thirty days in confinement, and then stopped reporting to his probation officer. The trial court concluded that he should serve his sentence in confinement.

II. Analysis

On appeal, the appellant claims that his daughter's situation and "the circumstances of his life had made it nearly impossible for him to function and comply with the dictates of probation."

He contends that although he violated probation, the trial court should have placed him back on probation. However, upon finding by a preponderance of the evidence that the appellant has violated the terms of his probation, a trial court is authorized to order an appellant to serve the balance of his original sentence in confinement. See Tenn. Code Ann. §§ 40-35-310 and-311(e); State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Furthermore, probation revocation rests in the sound discretion of the trial court and will not be overturned by this court absent an abuse of that discretion. State v. Leach, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995). An abuse of discretion exists when “the record contains no substantial evidence to support the trial court’s conclusion that a violation has occurred.” State v. Conner, 919 S.W.2d 48, 50 (Tenn. Crim. App. 1995). In this case, the appellant admitted to various probation violations. At the very least, he acknowledged that he failed to report to his probation officer and failed to pay court costs and probation fees. Therefore, the trial court could order him to serve his sentence in confinement.

III. Conclusion

Based upon the record and the parties’ briefs, we affirm the judgment of the trial court.

NORMA McGEE OGLE, JUDGE